HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL No: 1333 of 2005

Between:

Singareni Collieries Company Limited, T E, Kothagudem, Khammam District, Rep by its Chief General Manager and others.

... APPELLANTS

AND

Sri M. Durgaiah and others.

...RESPONDENTS

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::JUDGMENT::

Counsel for the Appellants: MR.K.SRINIVASA MURTHY
Counsel for the Respondents: MR.Y.VENKAT SASTRY

27th December, 2005

Per G.S. Singhvi, CJ

This appeal is directed against order dated 14.12.2004 passed by the learned Single Judge whereby allowed the writ petition filed by the respondents and ordered their reinstatement with continuity of service and back wages.

The appellants have challenged the order under appeal mainly on the ground that the learned Single Judge committed a serious error by disposing of the writ petition on the basis of order dated 19.12.1999 passed by the Division Bench in Writ Appeal

No. 1618 of 1999, ignoring the fact that factual matrix of that case was entirely different. Another plea taken by the appellants is that the direction given by the learned Single Judge for giving benefit of continuity of service and back wages to the respondents is legally unsustainable because their services had been discontinued sometime in 1999 and no explanation was forthcoming for the delay of more than three years between the date of discontinuance of the engagement of the respondents and filing of the writ petition.

In the affidavit filed by Respondent No. 1, Sri M. Durgaiah, in support of the writ petition, it was averred that he was working as gardener since 7.5.1985 against a permanent vacancy; that he had continuously worked from 12.4.1993 and that other petitioners have also continued in service till 1999 with some breaks. It was then averred that the action of the non-petitioners to discontinue their services was violative of Articles 14, 16, 21 and 38 of the Constitution. It was further averred that despite the availability of permanent vacancies in the cadre of Gardner/Attender/Gardner-cum-Watchman, the management of Singareni Collieries Company High School had discontinued their services.

In the counter affidavit filed on behalf of the non-petitioners (appellants herein), an objection was raised to the very maintainability of the writ petition on the ground that the petitioners were employees of the Singareni Collieries Educational Society and not of the company and a petition for grant of a declaration that the termination of their services was illegal could not be entertained against the Society. It was further averred that the writ petitioners had been engaged on purely temporary basis for specified duration and their services were discontinued due to non-availability of work. The appellants also raised the plea of delay and pleaded that in the absence of any cogent explanation for the long time gap between the date of discontinuance of their engagement and filing of the writ petition, no relief should be granted to the writ petitioners.

The learned Single Judge disposed of the writ petition by simply making reference to order dated 19th December, 1999 passed in Writ Appeal No.1618 of 1999 and by assuming that the two cases were identical. This is clearly evident from the following extracts of the order under challenge:

> "The petitioners herein, who have been working as NMRs, were sought to be removed along with several others. The Writ Petition No.32720 of 1997 filed by others was initially dismissed, but however, subsequently, on

appeal the Division Bench of this court in the aforesaid mentioned case allowed the appeal (W.A.No.1618 of 1999) with a direction to reinstate the services of the petitioner with full back wages and also continuity of service.

Having regard to the said decision of the Division Bench, this Writ Petition is also allowed with similar directions to reinstate the petitioners with full back wages and with continuity of service. However, the respondents are directed to pay the back wages from the date of termination till the date of reinstatement. The petitioners will be at liberty to seek appropriate relief before an appropriate forum for minimum wages under the Minimum Wages Act. …"

Learned counsel for the appellants invited our attention to the fact that Sri A. Boomaiah who had filed Writ Appeal No.1618 of 1999 had continuously worked as Nominal Muster Roll Casual Worker in the employment of the company from 10-8-1992 to 21-11-1997 and his service was terminated without following the procedure prescribed under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), whereas, the respondents had been appointed as Casual workers for fixed period without following the procedure prescribed for regular appointment. Learned counsel pointed out that the services of the respondents had been discontinued from time to time at the end of the tenure of their engagement and their case was not similar to that of Sri A. Boomaiah. Learned counsel criticized the order under appeal by asserting that the learned Single Judge granted relief of reinstatement, continuity of service and back wages to the respondents without even looking into the factual matrix of the case and without dealing with the objections raised on behalf of the appellants to the maintainability of the writ petition.

Learned counsel for the respondents argued that the innocuous direction given by the learned Single Judge does not call for interference because the case of the respondents is similar to that of Shri A. Bhoomaiah. He submitted that the appellants were victims of unfair labour practice perpetuated by the management of the company. He referred to letter dated 4.12.1999 written by Head Master of the School to the Chief (T&E) of the company, by which the case of respondent No.1 was recommended for appointment as Gardener-cum-Sweeper in the school and submitted that the management of the company and the school should not be allowed to take advantage of the uneven position in which the respondents were placed.

We have given serious thought to the arguments of the learned counsel and have gone through order dated 19.12.1999 passed in Writ Appeal No.1618 of 1999 (A.Bhoomaiah v. Chairman & Managing Director, The Singareni Collieries Co. Ltd., Kothagudem and others).

In our opinion, the direction given by the learned Single Judge for reinstatement of the writ petitioners (respondents herein) and continuity of service and full back wages is legally unsustainable.

A reading of order dated 19.12.1999 passed in Writ Appeal No.1618 of 1999, unmistakably shows that the Division Bench had allowed the appeal filed by Sri A. Boomaiah in the peculiar facts of that case. The Division Bench noted that the appellant had continuously worked under the employer for more than five years and three months without any break. The Division Bench then took notice of the so-called unemployment in the unorganised sector and the unfair labour practice being in vogue in the employment. The Division Bench also took cognizance of the provisions contained in the Act and ordained that the appellant was entitled to be reinstated into service. In the case before us no material has been brought on record to show that the respondents had been appointed after due selection or that they had continuously worked under the employer. Rather, the documents filed by the parties shows that the respondents were engaged by the management of the school with intermittent breaks. Therefore, the direction given by the learned Single Judge for reinstatement of the respondents with continuity of service and back wages cannot be sustained.

The matter deserves to be considered from another angle. It is not the pleaded case of the writ petitioners that they were appointed after considering the claims of all eligible persons by sending requisition to the employment exchange as per the requirement of the Employment Exchanges (compulsory notification of vacancies) Act, 1959 or by issuing public advertisement. That apart, they have not produced any evidence to prima facie show that their engagement for fixed term with intermittent breaks amounted to an unfair labour practice. They have also not explained as to why they had not sought intervention of the court immediately after discontinuance of their engagement in the year 1999. In this view of the matter, the order under challenge cannot be sustained by recording a finding that the employer had resorted to unfair labour practice.

There is another reason why the impugned order should be set aside. Before ordering reinstatement of the respondents, learned Single Judge did not advert to the facts of the case and did not consider whether the action of the action of the employer was vitiated due to violation of any provision of the Constitution or statute enacted by the legislature. The learned Single Judge also failed to consider whether there was merit in the objection raised on behalf of the employer to the maintainability of the writ petition and whether it was a fit case for grant of relief despite the fact that the petitioners had not explained the long time gap of more than three years. In our view, failure of the learned Single Judge to advert to the relevant issues arising in the writ petition has resulted in failure of justice and, therefore, the order under challenge is liable to be set aside.

Before concluding we may mention that the respondents who fall within the definition of 'workmen' under Section 2 (s) of the Act could have questioned the alleged wrongful termination of their services by raising an industrial dispute under Section 10 read with Section (2A) of the Act. The remedy available to them by seeking reference of the dispute will have to be treated as an effective alternative remedy in view of the judgments of the Supreme Court in **Premier Automobiles Ltd., v. Kamlakar Shantaram Wadke and others** and **The Rajasthan State Road Transport Corporation v. Krishna Kant & others**.

For the reasons mentioned above, the appeal is allowed. The order under challenge is set aside and the case is remanded to the learned Single Judge for fresh adjudication of the writ petition. The parties shall be free to reiterate the points taken by them in their pleadings. They shall also be free to raise other points in support of their respective cases.

G.S. SINGHVI, CJ

Date: 27th December, 2005

R. SUBHASH REDDY,J

Pnb / vtv / svs